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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JAMES L. DAVIS,

11 Plaintiff,

No. CIV S-04-1390 LKK EFB P

12 vs.

13 TERESA A. SCHWARTZ, et al.,

14 Defendants.

ORDER

15 \_\_\_\_\_/  
16 Plaintiff is a prisoner, without counsel, suing for alleged civil rights violations. *See* 42  
17 U.S.C. § 1983. Defendant has filed a motion for additional time to file a dispositive motion. In  
18 the July 28, 2006, schedule, this court established December 21, 2006, as the date by which  
19 dispositive motions must be filed. Therefore, the court construes defendants' motion as one to  
20 modify the schedule.

21 A schedule may be modified upon a showing of good cause. Fed. R. Civ. P. 16(b). Good  
22 cause exists when the moving party demonstrates he or she cannot meet the deadline despite  
23 exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.  
24 1992). In her motion filed December 21, 2006, the day before she should have filed a  
25 dispositive motion, defendant asserts that she could not timely file a dispositive motion because  
26 counsel has not obtained a necessary declaration. The motion notes that in the week before

1 December 21 counsel for defendant filed dispositive motions in two other cases, and further  
2 notes that counsel will be out of the office for several days over the holidays. However, the  
3 motion neither cites the applicable standard nor attempts to relate that standard to defense  
4 counsel being busy with other cases with an explanation of why that qualifies under the required  
5 showing. To obtain an extension of time beyond that set in a scheduling order, the moving party  
6 must explain what she has done to meet the deadline. Here, defendant asserts, without  
7 explanation, that her counsel has not marshaled crucial evidence and that counsel has been busy  
8 for at least a week before the impending deadline, and that counsel plans to take time off from  
9 work *after* the dispositive motion should have been filed.

10 Finally, this court has no rule that automatically suspends the time to act once a party  
11 files a request for additional time. Merely submitting a request does not, itself, modify the due  
12 date. Therefore, by filing her motion to modify the schedule the day before she should have filed  
13 a dispositive motion, defendant effectively disobeys the scheduling order. This order serves as  
14 an admonition that counsel must timely seek extensions or modifications and until such time as  
15 an order is entered granting any such modification, the parties must comply with existing  
16 schedule. *See* L.R. 11-110.

17 Defendant has failed to make the showing required to modify the schedule and failed to  
18 comply with the July 28, 2006, scheduling order. Nevertheless, in the interest of managing its  
19 docket and possibly eliminating or narrowing issues for trial, the court will extend the time to  
20 file a dispositive motion.

21 Defendant shall have 15 days from the date this order is served to file a dispositive  
22 motion. The court does not intend to extend this time.

23 So ordered.

24 Dated: December 28, 2006.

25   
26 EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE